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September 14, 2004

Dear Xxxxx:

This letter is in response to your letter dated April 23, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting clarification of the laws pertaining to Illinois Sales Tax. We are a private club located in CITY that contracts with a catering company out of CITY2 to provide food, delivery and staff for serving our members and guests. Some of the food that is delivered is completely prepared and some is prepared and cooked at our facility. The staff are paid and billed on a per hour basis separately from the per person charge that includes the food only. Our understanding of Illinois Sales Tax law is that CITY2's Sales Tax Rate of 8.5% is applicable to the food costs we are being charged by our caterer only and not on the separate labor charges. PERSON from your Business Assistance Line and our accountant confirmed this on April 22, however, our caterer supplied us with a copy of a letter they received from your office in 1994 that has us confused. A copy of this letter and a sample bill are attached for reference. We would greatly appreciate it if someone from your office could contact us and explain which charges Sales Tax is applicable.

#### **DEPARTMENT'S RESPONSE**

For general information purposes, the Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Persons that are engaged in the business of selling meals to purchasers for use or consumption incur

Retailers' Occupation Tax liability on their gross receipts from such sales. Such persons specifically include caterers. See 86 Ill. Adm. Code 130.2145.

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. The term "selling price" is defined under the Retailers' Occupation Tax Act as the "consideration for a sale valued in money . . . and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever . . . ." See 35 ILCS 120/1. As indicated by this definition, a retailer's cost of doing business is not deductible from his gross receipts. This principle is also articulated in 86 Ill. Adm. Code 130.410. The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs . . . or any other expenses whatsoever" are not deductible from gross receipts.

As a result, tax is imposed upon a caterer's entire gross receipts from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his or her sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor and set-up and delivery. Each of these items is a part of the cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items. They are simply the costs of doing business as a caterer, just as they would be part of the overhead expenses incurred by a restaurant owner.

When a caterer makes separate charges to customers for items which are not associated with the sale of food, such items are not taxable, provided that they are separately listed on the invoice to the customer and are initialed by the customer. This would be the case, for instance, with charges for entertainment (clowns, bands and jugglers). None of the entertainment mentioned would be associated with the sale of food, and if separately listed on the invoice and initialed, would not be taxable.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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